

HOUSE BILL 1206

I3, I2

0lr0703
CF SB 762

By: **Delegates Frick, Barkley, Barve, Bobo, Bronrott, Cardin, Carr, G. Clagett, Doory, Dumais, Feldman, Frush, George, Hecht, Hixson, Howard, Kramer, Lee, Miller, Mizeur, Montgomery, Morhaim, Murphy, Niemann, Olszewski, Reznik, Rice, Taylor, F. Turner, and Waldstreicher**

Introduced and read first time: February 18, 2010

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Consumer Protection – Refund Anticipation Loans and**
3 **Checks**

4 FOR the purpose of prohibiting certain persons from soliciting the execution of,
5 processing, receiving, or accepting an application or agreement for a refund
6 anticipation loan or refund anticipation check or facilitating the making of a
7 refund anticipation loan or refund anticipation check under certain
8 circumstances; requiring a facilitator of a refund anticipation loan or refund
9 anticipation check to display a certain schedule of fees in a certain manner;
10 requiring the schedule to contain certain information and disclosures;
11 prohibiting a facilitator from charging certain fees; requiring a facilitator to
12 make certain written and oral disclosures to certain consumers at a certain time
13 and in a certain manner; requiring the annual percentage rate for a refund
14 anticipation loan to be calculated using certain guidelines; prohibiting a
15 facilitator from taking certain actions relating to a refund anticipation loan or
16 refund anticipation check; providing that, under certain circumstances, a
17 certain provision of this Act does not prohibit a charge or fee from being
18 imposed by a facilitator; providing that a violation of this Act is an unfair or
19 deceptive trade practice under the Maryland Consumer Protection Act and is
20 subject to certain enforcement and penalty provisions; establishing certain
21 additional penalties for a willful failure to comply with this Act; defining certain
22 terms; and generally relating to refund anticipation loans and refund
23 anticipation checks.

24 BY adding to

25 Article – Commercial Law

26 Section 14–3801 through 14–3807 to be under the new subtitle “Subtitle 38.
27 Refund Anticipation Loans and Checks”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2005 Replacement Volume and 2009 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article – Commercial Law**

6 **SUBTITLE 38. REFUND ANTICIPATION LOANS AND CHECKS.**

7 **14-3801.**

8 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
9 INDICATED.

10 (B) “CONSUMER” MEANS AN INDIVIDUAL WHO, INDIVIDUALLY OR IN
11 CONJUNCTION WITH ANOTHER INDIVIDUAL, IS SOLICITED FOR, APPLIES FOR,
12 OR RECEIVES A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION
13 CHECK.

14 (C) “CREDITOR” MEANS A PERSON WHO MAKES A REFUND
15 ANTICIPATION LOAN OR WHO TAKES AN ASSIGNMENT OF A REFUND
16 ANTICIPATION LOAN.

17 (D) (1) “FACILITATOR” MEANS A PERSON WHO, INDIVIDUALLY OR IN
18 CONJUNCTION OR COOPERATION WITH ANOTHER PERSON:

19 (I) PROCESSES, RECEIVES, OR ACCEPTS AN APPLICATION
20 OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION
21 CHECK;

22 (II) SERVICES OR COLLECTS ON A REFUND ANTICIPATION
23 LOAN OR REFUND ANTICIPATION CHECK; OR

24 (III) FACILITATES THE MAKING OF A REFUND ANTICIPATION
25 LOAN OR REFUND ANTICIPATION CHECK.

26 (2) “FACILITATOR” DOES NOT INCLUDE A BANK, SAVINGS AND
27 LOAN ASSOCIATION, CREDIT UNION, OR PERSON WHO ACTS SOLELY AS AN
28 INTERMEDIARY AND DOES NOT DEAL WITH THE PUBLIC IN THE MAKING OF A
29 REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK.

30 (E) “REFUND ANTICIPATION CHECK” MEANS A CHECK, STORED VALUE
31 CARD, OR OTHER PAYMENT MECHANISM:

1 (1) THAT REPRESENTS THE PROCEEDS OF A CONSUMER'S TAX
2 REFUND;

3 (2) THAT WAS ISSUED BY A DEPOSITORY INSTITUTION OR OTHER
4 PERSON THAT RECEIVED A DIRECT DEPOSIT OF THE CONSUMER'S TAX REFUND;
5 AND

6 (3) FOR WHICH THE CONSUMER HAS PAID A FEE OR OTHER
7 CONSIDERATION.

8 (F) (1) "REFUND ANTICIPATION LOAN" MEANS A LOAN ARRANGED TO
9 BE PAID DIRECTLY OR INDIRECTLY FROM THE PROCEEDS OF A CONSUMER'S TAX
10 REFUND.

11 (2) "REFUND ANTICIPATION LOAN" INCLUDES A SALE,
12 ASSIGNMENT, OR PURCHASE OF A CONSUMER'S TAX REFUND AT A DISCOUNT OR
13 FOR A FEE, WHETHER OR NOT THE CONSUMER IS REQUIRED TO REPAY THE
14 BUYER OR ASSIGNEE IF THE INTERNAL REVENUE SERVICE DENIES OR REDUCES
15 THE CONSUMER'S TAX REFUND.

16 (G) (1) "REFUND ANTICIPATION LOAN FEE" MEANS ANY CHARGE,
17 FEE, OR OTHER CONSIDERATION CHARGED OR IMPOSED DIRECTLY OR
18 INDIRECTLY FOR THE MAKING OF OR IN CONNECTION WITH A REFUND
19 ANTICIPATION LOAN.

20 (2) "REFUND ANTICIPATION LOAN FEE" INCLUDES A CHARGE,
21 FEE, OR OTHER CONSIDERATION FOR A DEPOSIT ACCOUNT THAT IS USED FOR
22 RECEIPT OF A CONSUMER'S TAX REFUND TO REPAY THE AMOUNT OWED ON A
23 REFUND ANTICIPATION LOAN.

24 14-3802.

25 UNLESS THE FACILITATOR HAS COMPLIED WITH THIS SUBTITLE, A
26 FACILITATOR, OR AN OFFICER, AGENT, EMPLOYEE, OR REPRESENTATIVE OF A
27 FACILITATOR, INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH
28 ANOTHER PERSON, MAY NOT:

29 (1) SOLICIT THE EXECUTION OF, PROCESS, RECEIVE, OR ACCEPT
30 AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR
31 REFUND ANTICIPATION CHECK; OR

32 (2) FACILITATE THE MAKING OF A REFUND ANTICIPATION LOAN
33 OR REFUND ANTICIPATION CHECK.

1 **14-3803.**

2 (A) A FACILITATOR SHALL DISPLAY, IN A PROMINENT PLACE AT EACH
3 BUSINESS LOCATION OF THE FACILITATOR, A SCHEDULE OF THE FEES CHARGED
4 FOR FACILITATING REFUND ANTICIPATION LOANS AND REFUND ANTICIPATION
5 CHECKS.

6 (B) A FACILITATOR SHALL INCLUDE ON EACH FEE SCHEDULE THE
7 FOLLOWING:

8 (1) EXAMPLES OF THE ANNUAL PERCENTAGE RATE CHARGED
9 FOR REFUND ANTICIPATION LOANS IN THE AMOUNTS OF:

10 (I) \$250;

11 (II) \$500;

12 (III) \$1,000; AND

13 (IV) \$2,500;

14 (2) A LEGEND, CENTERED AND IN BOLD CAPITAL LETTERS IN AT
15 LEAST 14 POINT TYPE, STATING:

16 “NOTICE CONCERNING REFUND ANTICIPATION LOANS”; AND

17 (3) THE FOLLOWING STATEMENT:

18 “WHEN YOU TAKE OUT A REFUND ANTICIPATION LOAN, YOU ARE
19 BORROWING MONEY AGAINST YOUR TAX REFUND. IF YOUR TAX REFUND IS LESS
20 THAN EXPECTED, YOU WILL STILL OWE THE ENTIRE AMOUNT OF THE REFUND
21 ANTICIPATION LOAN. IF YOUR TAX REFUND IS DELAYED, YOU MAY HAVE TO PAY
22 ADDITIONAL COSTS. YOU USUALLY CAN GET YOUR TAX REFUND IN 8 TO 15 DAYS
23 WITHOUT PAYING ANY EXTRA FEES FOR A REFUND ANTICIPATION LOAN. YOU
24 CAN HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND YOUR REFUND
25 DIRECT DEPOSITED INTO YOUR OWN BANK ACCOUNT WITHOUT OBTAINING A
26 REFUND ANTICIPATION LOAN OR PAYING FEES FOR AN EXTRA PRODUCT.”.

27 (C) THE FEE SCHEDULE AND DISCLOSURES REQUIRED UNDER
28 SUBSECTIONS (A) AND (B) OF THIS SECTION SHALL BE PRINTED IN AT LEAST
29 14 POINT TYPE ON A SIGN NOT LESS THAN 16 BY 20 INCHES.

1 **(2) THAT IF THE CONSUMER'S TAX REFUND IS LESS THAN**
2 **EXPECTED, THE CONSUMER IS LIABLE FOR THE FULL AMOUNT OF THE REFUND**
3 **ANTICIPATION LOAN AND MUST REPAY ANY DIFFERENCE;**

4 **(3) THE AMOUNT OF THE REFUND ANTICIPATION LOAN FEE; AND**

5 **(4) THE ANNUAL PERCENTAGE RATE PAYABLE ON THE REFUND**
6 **ANTICIPATION LOAN.**

7 **(B) AT THE TIME A CONSUMER APPLIES FOR A REFUND ANTICIPATION**
8 **CHECK, A FACILITATOR ORALLY SHALL INFORM THE CONSUMER:**

9 **(1) OF THE AMOUNT OF THE REFUND ANTICIPATION CHECK; AND**

10 **(2) THAT THE CONSUMER MAY RECEIVE A TAX REFUND IN THE**
11 **SAME AMOUNT OF TIME WITHOUT PAYING A FEE IF THE CONSUMER'S TAX**
12 **RETURN IS FILED ELECTRONICALLY AND THE CONSUMER DIRECT DEPOSITS**
13 **THE TAX REFUND INTO THE CONSUMER'S OWN BANK ACCOUNT.**

14 **(C) THE DISCLOSURES REQUIRED BY THIS SECTION SHALL BE**
15 **PROVIDED IN THE LANGUAGE PRIMARILY USED FOR ORAL COMMUNICATION**
16 **BETWEEN THE FACILITATOR AND THE CONSUMER.**

17 **14-3806.**

18 **(A) A FACILITATOR MAY NOT:**

19 **(1) REQUIRE A CONSUMER TO ENTER INTO A LOAN AGREEMENT**
20 **IN ORDER TO COMPLETE A TAX RETURN;**

21 **(2) CHARGE ANY FEE OR REQUIRE ANY OTHER CONSIDERATION**
22 **FOR MAKING OR FACILITATING A REFUND ANTICIPATION LOAN OR REFUND**
23 **ANTICIPATION CHECK OTHER THAN THE FEE IMPOSED BY THE CREDITOR OR**
24 **OTHER PERSON THAT PROVIDES THE REFUND ANTICIPATION LOAN OR REFUND**
25 **ANTICIPATION CHECK;**

26 **(3) ENGAGE IN A TRANSACTION, PRACTICE, OR COURSE OF**
27 **BUSINESS THAT OPERATES A FRAUD ON A CONSUMER IN CONNECTION WITH A**
28 **REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK, INCLUDING**
29 **MAKING ORAL STATEMENTS THAT CONTRADICT ANY OF THE INFORMATION**
30 **REQUIRED TO BE DISCLOSED UNDER THIS SUBTITLE;**

1 **(4) ARRANGE, DIRECTLY OR INDIRECTLY, FOR ANY THIRD PARTY**
2 **TO CHARGE ANY INTEREST OR FEE RELATED TO A REFUND ANTICIPATION LOAN**
3 **OR REFUND ANTICIPATION CHECK, OTHER THAN THE REFUND ANTICIPATION**
4 **LOAN OR REFUND ANTICIPATION CHECK FEE IMPOSED BY THE CREDITOR,**
5 **INCLUDING CHARGES FOR INSURANCE, ATTORNEY'S FEES, COLLECTION COSTS,**
6 **OR CHECK CASHING;**

7 **(5) MISREPRESENT A MATERIAL FACT OR CONDITION OF A**
8 **REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK; OR**

9 **(6) FAIL TO PROCESS AN APPLICATION FOR A REFUND**
10 **ANTICIPATION LOAN PROMPTLY AFTER THE CONSUMER APPLIES FOR THE**
11 **REFUND ANTICIPATION LOAN.**

12 **(B) SUBSECTION (A)(2) OF THIS SECTION DOES NOT PROHIBIT A**
13 **CHARGE OR FEE, INCLUDING A FEE FOR TAX RETURN PREPARATION, THAT IS**
14 **IMPOSED BY A FACILITATOR ON ALL OF ITS CUSTOMERS IF THE SAME CHARGE**
15 **OR FEE, IN THE SAME AMOUNT, IS IMPOSED ON CUSTOMERS WHO DO NOT**
16 **RECEIVE REFUND ANTICIPATION LOANS, REFUND ANTICIPATION CHECKS, OR**
17 **OTHER TAX-RELATED FINANCIAL PRODUCTS.**

18 **14-3807.**

19 **(A) A VIOLATION OF THIS SUBTITLE IS:**

20 **(1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE**
21 **MEANING OF TITLE 13 OF THIS ARTICLE; AND**

22 **(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS**
23 **CONTAINED IN TITLE 13 OF THIS ARTICLE.**

24 **(B) IN ADDITION TO THE REMEDIES PROVIDED UNDER TITLE 13 OF**
25 **THIS ARTICLE, A FACILITATOR WHO WILLFULLY FAILS TO COMPLY WITH ANY**
26 **PROVISION OF THIS SUBTITLE IS LIABLE TO THE CONSUMER FOR:**

27 **(1) ACTUAL AND CONSEQUENTIAL DAMAGES;**

28 **(2) STATUTORY DAMAGES IN THE AMOUNT OF \$1,000; AND**

29 **(3) REASONABLE ATTORNEY'S FEES AND COSTS.**

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2010.